

ANSWER TO PETITION TO CANCEL

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #39

134290v1

3. Answering paragraph 2 of the Petition to Cancel, Starlume denies that Petitioner has any valid or legal right to use the mark that is the subject of this cancellation proceeding in the manufacture and sale of goods of the same nature as Starlume's. Starlume lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 2, and on that basis denies each of them.

4. Answering paragraph 3 of the Petition to Cancel, Starlume lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 3, and on that basis denies each of them.

5. Answering paragraph 4 of the Petition to Cancel, Starlume denies that it is not entitled to continue registration of the mark that is the subject of this cancellation proceeding; denies that it is not entitled to exclusive use of its mark in commerce on the goods specified; and further denies that its mark does not function to identify its goods and distinguish them from those offered by others. Starlume notes that Petitioner's use of the term "terms" in paragraph 4 is vague and ambiguous, and to the extent Petitioner intends to assert any additional allegations as part of paragraph 4, Starlume lacks sufficient knowledge or information to form a belief as to the truth of those remaining allegations, and on that basis denies each of them.

6. Answering paragraph 5 of the Petition to Cancel, Starlume denies the allegations contained therein.

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

The Petition to Cancel should be dismissed on the ground that Petitioner has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
(Secondary Meaning)

Through substantial and widespread use, advertising and promotion in support thereof and media coverage, the contested mark has acquired a strong secondary meaning.

THIRD AFFIRMATIVE DEFENSE
(Lack of Standing)

Petitioner lacks standing to petition to cancel the Registration, in that Petitioner has not shown how it would be likely to be damaged by the continuing registration of the mark at issue in this proceeding.

FOURTH AFFIRMATIVE DEFENSE
(Unclean Hands)

Petitioner's claims, and each of them, are barred by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE
(Estoppel)

On information and belief, Petitioner's claims, and each of them, are barred by the doctrine of equitable estoppel by virtue of Petitioner's prior statements made to the Trademark Trial and Appeal Board in connection with its own applications for trademark registrations.

WHEREFORE, Starlume, Inc. prays that:


1. Cancellation No. 92040906 be dismissed with prejudice; and
2. For such other relief as the Board deemes proper.

Respectfully submitted,

STEINHART & FALCONER LLP

Date: September 30, 2002

By: _____


Rachel E. Matteo-Boehm
Steinhart & Falconer LLP
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San Francisco, CA 94105-2150
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Attorneys for Respondent
STARLUME, INC.

CERTIFICATE OF SERVICE

The undersigned attorney for Starlume, Inc. hereby certifies that one copy of the following document was served:

Answer to Petition to Cancel

on Petitioner Premier Candle Corp. by U.S. mail to Petitioner's attorneys:

William H. Logsdon, Esq.
Kent E. Baldauf, Jr., Esq.
Philip J. Foret, Esq.
Webb, Ziesenheim, Logsdon,
Orkin & Hanson, P.C.
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219-1818

this 30th day of September 2002.

A handwritten signature in cursive script, appearing to read 'Rachel E. Matteo-Boehm', written over a horizontal line.

Rachel E. Matteo-Boehm

CERTIFICATE OF EXPRESS MAIL MAILING

I, Nancy K. Burnett, do hereby certify that the enclosed **ANSWER TO PETITION TO CANCEL** is being deposited with the United States Postal Service as Express Mail, postage prepaid, in a box addressed to the Assistant Commissioner For Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on this date of September 30, 2002.

By Nancy K. Burnett

(Name) Nancy K. Burnett

Express Mail Label No. EV085010672US

Date of Deposit September 30, 2002

TTAB

STEINHART & FALCONER LLP

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ATTORNEYS

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September 30, 2002

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Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

09-30-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #39

Re: PREMIER CANDLE CORP. v. STARLUME, INC.
Cancellation No.: 92040906
Our File No.: 81133-11

Dear Sir or Madam:

Enclosed for filing in the above-referenced proceeding is an Answer to Petition to
Cancel.

No fee is required in connection with the filing of the subject papers. However,
should the PTO believe any fee is required, you are authorized to charge the Steinhart & Falconer
Deposit Account No. 19-4215 (Our File No.: 81133-11).

Please date stamp and return the enclosed postcard indicating receipt of this
transmittal.

Respectfully,

Rachel E. Matteo-Boehm

REB/nb
Enclosure